

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

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:: JUDGMENT ::

National Insurance Co. Ltd. Vs. Kamla & Others

S.B.CIVIL MISC. APPEAL NO.103/1994.

Against the award dated 17.11.1993
made by the Motor Accidents Claims
Tribunal-II, Jodhpur in Claim Case
No.85/1992.

Date of Judgment :::: 11.10.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. R.K.Mehta, for the appellant.
Ms. Shankutla Mehta, for the claimants.

BY THE COURT:

The insurer of the vehicle involved in accident has preferred this appeal assailing the award dated 17.11.1993 made by the Motor Accidents Claims Tribunal-II, Jodhpur in Claim Case No.85/1992 insofar the liability for payment of compensation has been mulcted upon it.

Briefly put the facts of the case are that the claimants, wife and minor children of the deceased Himmata Ram submitted the claim application on 08.07.1991 against the driver, owner and insurer of the truck bearing registration No.RJF 5664 with the averments that the deceased Himmata Ram was 35 years of age and earning Rs.30/- per day i.e. Rs.900/- per month as a labourer. In the particulars of employer of the deceased, the claimants stated: 'none'. Narrating the incident, the claimants stated that at about 9.30 a.m. on 20.01.1991 near Mathania town, the deceased Himmata Ram while travelling in the said truck with about 25-30 other labourers from village Kelava to Rajasthan Canal for labour, met with his untimely end when the truck capsized and he was crushed under the vehicle. The claimants sought compensation in the sum of Rs.3,41,000/- towards pecuniary and non-pecuniary losses.

The driver and owner of the truck in question submitted that the accident occurred for another truck seeking to overtake their vehicle near Mathania when the driver took the truck in question to its left and because of the sand on the road side, the truck turned turtle. It was also stated that the truck was taking the deceased Himmata Ram and other labourers to Rajasthan Canal and was being driven with all

care and caution. The insurer of the vehicle non-applicant No.3 in its separate reply specifically submitted that the vehicle in question was insured as a commercial vehicle and there was no coverage for transportation of the passengers nor such coverage was required under the provisions of the Motor Vehicles Act, 1988 ('the Act'). According to the insurer, from the admitted case of the claimants, it was clear that the truck was transporting the labourers, about 30 in number, and the truck was being plied in violation of the policy conditions; that there was no coverage of such passenger and the deceased was not employed on the truck as a labourer. The insurer, inter alia, pleaded thus:

"1- यह कि वाहन संख्या आर.जे.एफ. 5664 का बीमा एक वाणिज्य वाहन के रूप में उत्तरदाता द्वारा किया गया था जिसमें सवारियां ढोने के सम्बन्ध में न तो कोई कवरेज किया गया था और न ही कोई बीमा कवरेज मोटर यान अधिनियम, 1988 के प्रावधानों के अन्तर्गत किया जाना वांछित ही था। ऐसी स्थिति में वाणिज्य वाहन में सवारियां ले जाने का कृत्य बीमा पॉलिसी तथा मोटर यान अधिनियम के प्रावधानों के विपरीत किया गया कृत्य था जिसके लिए कोई भी दायित्व उत्तरदाता पर आयद नहीं होता है।

"5- यह कि क्लेम प्रार्थना पत्र के मद संख्या-10 में जो कथन किया गया है उसको देखते हुए भी भली प्रकार प्रमाणित है कि मृतक ट्रक में एक यात्री की हैसियत से यात्रा कर रहा था जो कि मजदूरी करने राजस्थान नहर जा रहा था तथा ना तो अपने ट्रक पर नियोजित था और ना ट्रक में ऐसे यात्रियों को ले जाने हेतु बीमा संविदा ही जारी की गई थी इस कारण क्लेम प्रार्थना पत्र विरुद्ध उत्तरदाता चलने योग्य नहीं हैं।

“अ- यह कि उत्तरदाता एक बीमा कम्पनी है जो कि बीमा व्यवसाय करती है तथा मोटरयान अधिनियम 1988 की अनुपालना में वाहनों का बीमा करती है। मोटरयान अधिनियम के प्रावधानों के अन्तर्गत वाणिज्य वाहन में यात्रियों का बीमा किया जाना ना तो आवश्यक है और ना ही वाणिज्य वाहन में यात्रियों को अधिनियम के प्रावधानों के अन्तर्गत ले जाया ही जा सकता है। साथ ही यह भी निवेदन है कि कोई अतिरिक्त प्रीमियम लेकर यात्रियों के सम्बन्ध में रिस्क कवर की हुई नहीं थी। इस कारण भी उत्तरदाता पर मौजूदा मामले में कोई भी दायित्व आयद नहीं होता है।”

On the pleadings of the parties, the Tribunal framed following issues for determination of the questions involved in the case:

“1. क्या अप्रार्थी संख्या 1 चोलाराम ने ट्रक नं. आर.जे.एफ. 5664 को दिनांक 20.1.91 को सवेरे 9.30 बजे ए.एम. पर तेज गति व लापरवाही से चलाकर दुर्घटना कारित की जिससे मृतक हिम्मताराम की मृत्यु हो गयी ?

प्रार्थिनी

2. क्या प्रार्थीगण रुपये 3,41,000/- क्षतिपूर्ति के रूप में प्राप्त करने के अधिकारीणी है।

प्रार्थिनी

3. क्या बीमाकृत वाणिज्यक वाहन में सवारियाँ थी, को बैठाना बीमा पालिसी तथा मोटरयान अधिनियम के प्रावधानों के विपरीत था इसलिये अप्रार्थी सं. 3 का कोई दायित्व नहीं बनता है?

अप्रार्थी संख्या 3

4. क्या वाहन का उपयोग संविदा के प्रावधानों के विरुद्ध किया जा रहा था तथा ट्रक में यात्रा कर रहे व्यक्तियों की जोखिम के लिये कोई भी कवरेज प्रभावशील नहीं था इसलिये अप्रार्थी संख्या तीन के विरुद्ध यह प्रार्थना पत्र चलने योग्य नहीं है?

अप्रार्थी संख्या तीन

5. अनुतोष "

In evidence, the claimants examined PW-1 Smt.Kamla, PW-2 Bhoma Ram and PW-3 Rukma; whereas on behalf of non-applicants were examined driver of the truck in question Chola Ram as DW-1, owner of the truck Mohanlal as DW-2 and the Divisional Manager of the insurer, Sunil Gupta as DW-3. The parties also produced relevant documentary evidence including the insurance policy Ex.A/1.

After hearing the parties, learned Judge of the Tribunal found that the accident occurred for rash and negligent driving of the truck in question and found the claimants entitled for compensation in the sum of Rs.1,63,500/- However, while considering the question of violation of policy conditions and the risk in relation to the deceased being not covered under the insurance policy, the learned Judge took the view on the basis of the evidence available on record that the truck was transporting the labourers to and fro the site of work at Rajasthan Canal every day; and that there was a contract between works contractor of Rajasthan Canal and the owner of the vehicle, non-applicant No.2 Mohanlal; that owner of the vehicle must have been recovering hire charges from the works contractor and, therefore, non-applicant No.3 was liable for compensation. In issue No.4 learned Judge observed that deceased and other labourers were not riding the vehicle

of their own volition but were being transported on the basis of agreement between the works contractor and the vehicle owner and the labourers were loading and unloading the construction material and, therefore, it cannot be said that the vehicle was being used in violation of the contract conditions; and, therefore, the non-applicant No.3 was unable to prove issue No.4 in its favour. On these considerations, learned Judge proceeded to hold the appellant insurer liable and directed it to make payment of the award amount with interest at the rate of 6% per annum and to pay interest at the rate of 12% in case of not making payment within three months.

Learned counsel Mr.R.K.Mehta appearing for the insurer after referring to the evidence available on record has contended that the vehicle in question was a goods carrying vehicle and was insured as such but no premium was paid for the labourers or the passengers in the vehicle; that coverage under the insurance policy Ex.A/1 was only to the extent required by the Act and the deceased being admittedly a passenger in the goods vehicle and having sustained injuries and died because of capsizing of the vehicle he was travelling in, liability for compensation in this case could not have been mulcted upon the insurer. Learned counsel has referred to and relied upon the decisions of the Hon'ble

Supreme Court in New India Assurance Co. Ltd. Vs. Asha Rani and others: 2003 ACJ 1 and National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and others: 2005 ACJ 72. Learned counsel submitted that the insurer has made payment of the award amount in this case but the same was ordered to be disbursed to the claimants on furnishing solvent security for restitution in case the appeal succeeds and in the facts of the case when insurer is not all liable to make payment, restitution deserves to be ordered in favour of the appellant. Learned counsel appearing for the claimants has duly supported the impugned award with the submissions that the deceased was travelling in the vehicle in terms of his engagement as a labourer and he was being transported to the work site in the truck in question in the course of his employment and it cannot be said that the liability for the award amount cannot be fastened upon the insurer. Learned counsel submitted in the alternative that if the insurer be not found in liability in the present case, the fact remains that the claimants have already been made payment by the insurer and the claimants are poor persons and in the circumstances of the case, the amount in dispute may be recovered from the truck owner. Nobody has appeared for the owner of the vehicle.

Having heard learned counsel for the parties and having examined the record, this Court is clearly of opinion that the Tribunal has been in error in holding the insurer liable in this case.

It is not in dispute and is an admitted position that the vehicle in question was a goods carrying vehicle and the deceased with other labourers was travelling in it for the purpose of being transported to work site of some other contractor; and not the owner of the vehicle. The owner of the vehicle has not said anything in his examination-in-chief about coverage of liability in relation to the deceased under the insurance policy; and in his cross-examination he has admitted that the truck was being used for transportation of the labourer of some other contractor named Hajarimal. He has also admitted that he never made any payment of wages to these persons and the truck was used for the purpose of transportation of labour at the hire charges of Rs.300/- per day. Mohanlal has stated in his cross-examination by the insurer thus:

“मैं ट्रक आपरेटर हूँ यह ट्रक मजदूरों को लाने ले जाने का कार्य करता था। ट्रक में सवार मजदूर हजारीमल लालूजी का काम करते थे। मेरा काम नहीं करते थे। इनकी मजदूरी ठेकेदार ही देता था। मैंने मजदूरी कभी नहीं दी। मेरी ट्रक daily wages पर

किराये दी हुई थी जिसमें मजदूरों को लाने ले जाने का काम भी था । एक दिन का 300/-रु. ट्रक का किराया था।"

A look at the insurance policy Ex.A/1 makes it clear that it was issued for a goods carrying vehicle after charging premium of Rs.240/- towards public risk, Rs.16/- for legal liability towards driver and cleaner and another Rs.100/- for increasing of third party limits. The Divisional Manager of the insurer has duly pointed out the extent of such insurance coverage and has specifically stated that under this policy risk of a passenger was not covered. In his cross-examination on behalf of driver and owner of the vehicle he has pointed out that Rs.16/- had been charged for driver and cleaner and denied the knowledge if the labourer were in the truck for the purpose of transportation of 'bajari' but has stated that their risk was not covered under the policy.

The law applicable to the fact situation of the present case admits of no dispute after authoritative pronouncement of Hon'ble Supreme Court in Asha Rani's case (supra) wherein the Hon'ble Supreme Court has clearly held that the risk of passenger in the goods vehicle is not covered under Section 147 of the Motor Vehicles Act and the earlier view of the Hon'ble Supreme Court in New India Assurance Co. Ltd.Vs.

Satpal Singh: 2000 ACJ 1 (SC) has been over-ruled. The law relating to gratuitous passenger in the goods vehicle has come for further exposition in the case of National Insurance Co. Ltd. Vs. Baljit Kaur and others: 2004 ACJ 428 wherein the Hon'ble Apex Court has held that even in amendment of the year 1994 it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of benefit of insurance to such category of people. The learned Judge of the Tribunal has merely referred to an assumed contract between the truck owner and the site contractor which has got absolutely no co-relation with the question of liability of the insurer under the insurance policy. The victim was being carried in a goods vehicle as a passenger only and the liability in his relation being not covered under the contract of insurance, the submissions made by Mr.Mehta for exonerating the insurer from its liability in this case deserve to succeed.

However, the question in this case remains about final relief. Admittedly the deceased was a labourer earning wages of Rs.30/- per day and the claimants, wife and six

children of the deceased, have been allowed compensation only in the sum of Rs.1,63,500/- that had already been paid to them by the insurer under the impugned award. Though this Court is clearly of opinion that the insurer is required to exonerated of its liability, however, so far recovery of the amount paid to the claimants is concerned, in the overall circumstances of the case, it does not appear appropriate to direct recovery of the amount from the claimants though they had already submitted an undertaking and solvent security for restitution in terms of the interim order made by this Court on 25.02.1994. The Hon'ble Supreme Court in Baljit Kaur's case (supra) has noticed the position of law and has pointed out that the legal position thus being clarified shall have prospective effect. The Tribunal as also the High Court in the said case of Baljit Kaur had proceeded in terms of the decision of the Apex Court in Satpal Singh's case that was over-ruled only in Asha Rani (supra). Therefore, the Hon'ble Supreme Court issued directions that insurer shall satisfy the award amount and then recover the same from the owner of the vehicle and for this purpose, it would not be necessary for the insurer to file a separate suit but it may initiate the proceeding before the executing court.

In the facts of the present case, this Court is of opinion that the appellant-insurer also deserves to be left free to recover the amount in execution against the owner of the vehicle because permitting the insurer to recover the amount from the claimants and then to drive the claimants to recover the amount from the owner would not be in consonance with the aims and objects of the Act and would cause serious hardship to the claimants.

As a result of the aforesaid, this appeal succeeds and is partly allowed to the extent indicated above. The appellant is exonerated of its liability and it is held that owner of the vehicle is liable to satisfy the award. The insurer having already made payment to the claimants shall be entitled to recover the same from the owner of the vehicle and for the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but may directly initiate proceedings in execution. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI), J.

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